

The Applicant, through his undersigned Attorney-of-Record respectfully requests a teleconference with the Examiner, if this rejection is not removed by this response.

35 USC §102

Claims 1 and 6 are herein rejected under 35 USC §102(b) as being anticipated by Chen (US DES 276,786). The Applicant respectfully disagrees.

Claim 1 recites in part “A bag slitting apparatus for opening a sealed bag along an edge of said bag,...wherein the other of said inner surfaces has **a transverse laterally-open concave groove** there across for receiving therein the blade tip and a continuously moving bag edge...” (emphasis added).

Chen teaches the ornamental design for a plastic bag opener, substantially as shown and described in the Design Patent at issue. The Chen design clearly shows a **convex surface** that is directly opposite of the blade tip. Chen does not discuss or teach that a transverse laterally-open concave groove is or can be present in the ornamental design contemplated by Chen. Therefore, among other reasons, Chen does not disclose the claimed invention, which contains in part that there is a transverse laterally-open concave groove there across for receiving therein the blade tip. Further, after a fair review of the Chen ornamental design, one with ordinary skill in the art of opening and bag opening device design and assembly would not consider designing and using a transverse laterally-open concave groove there across for receiving therein the blade tip.

In addition, Chen does not teach all of the claimed elements of the present application. “Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.” *W. L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983) (citing *Soundsciber Corp. v. United States*, 360 F.2d 954, 148 USPQ 298, 301 (Ct. Cl.), *adopted*, 149 USPQ 640 (Ct. Cl. 1966)) Further, the prior art reference must disclose each element of the claimed invention “**arranged as in the claim**”. *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984)(citing

Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)). Chen does not teach a a transverse laterally-open concave groove there across for receiving therein the blade tip. Claim 1 is therefore allowable as not being anticipated by Chen. Further, Chen does not anticipate claim 6 of the present application by virtue of its dependency on claim 1.

35 USC §103

Claims 2-5 are herein rejected under 35 USC §103(a) as being unpatentable over Chen (US DES 276,786) in view of Gilman (US 4,581,823). The Applicant respectfully disagrees.

The following is a quotation of MPEP 608.01 (n) page 600-70, column 2, paragraph 3:

“Examiners are reminded that a dependent claim is directed to a combination including everything recited in the base claim and what is recited in the dependent claim. **It is this combination that must be compared to the prior art, exactly as if it were presented as one independent claim.**” (Emphasis added).

In re Fritch reiterates MPEP § 608.01 (n) by stating that:

“dependent claims are non-obvious if the independent claims from which they depend are non-obvious...”. (972 F.2d 1260, 1266; 23 USPQ2d 1780, 1784 (Fed. Cir. 1992)). (Emphasis added).

Claims 2-5 of the present application are dependent on independent claim 1. Claim 1 is deemed non-obvious, and thus allowable, by the Examiner in Paper No. 3. Therefore, claims 2-5 must be allowable by virtue of their dependency on claim 1.

Aside from the above argument, claim 1 recites in part “A bag slitting apparatus for opening a sealed bag along an edge of said bag,...wherein the other of said inner surfaces has **a transverse**

laterally-open concave groove there across for receiving therein the blade tip and a continuously moving bag edge...” (emphasis added).

Chen teaches the ornamental design for a plastic bag opener, substantially as shown and described in the Design Patent at issue. The Chen design clearly shows a **convex surface** that is directly opposite of the blade tip. Chen does not discuss or teach that a transverse laterally-open concave groove is or can be present in the ornamental design contemplated by Chen. Therefore, among other reasons, Chen does not disclose the claimed invention, which contains in part that there is a transverse laterally-open concave groove there across for receiving therein the blade tip. Further, after a fair review of the Chen ornamental design, one with ordinary skill in the art of opening and bag opening device design and assembly would not consider designing and using a transverse laterally-open concave groove there across for receiving therein the blade tip. And based on this argument, among others, claim 1 of the present application is not obvious in view of Chen. Further, claims 2-5 are not obvious in view of Chen by virtue of their dependency on claim 1.

Gilman teaches a letter opener for cutting open an envelope comprising a channel-based blade holder having a pair of manually-movable arms and a cutting blade mounted on one of the arms. Gilman does not discuss or teach that a transverse laterally-open concave groove is or can be present in the contemplated embodiments of the Gilman patent. Therefore, among other reasons, Gilman does not disclose the claimed invention, which contains in part that there is a transverse laterally-open concave groove there across for receiving therein the blade tip. Further, after a fair review of Gilman, one with ordinary skill in the art of opening and bag opening device design and assembly would not consider designing and using a transverse laterally-open concave groove there across for receiving therein the blade tip. And based on this argument, among others, claim 1 of the present application is not obvious in view of Gilman. Further, claims 2-5 are not obvious in view of Gilman by virtue of their dependency on claim 1.

Finally, with regard to the present rejection, there is no motivation or suggestion to combine or modify the Chen ornamental design in view of Gilman, given that Gilman does not discuss or teach that a transverse laterally-open concave groove is or can be present in the contemplated embodiments of the Gilman patent. Based on this argument, among others including those discussed

above, claim 1 is allowable as patentable over Chen in view of Gilman. Further, claims 2-5 are allowable as patentable over Chen in view of Gilman by virtue of their dependency on independent claim 1.

REQUEST FOR TELECONFERENCE

The Applicant respectfully requests a teleconference with the Examiner if all of the issues are not resolved and the application not placed in condition for allowance upon review of this Response.

The undersigned Attorney-of-Record can be reached on behalf of the Application at the direct line number shown below.

REQUEST FOR ALLOWANCE

Claims 1-6 are pending in this application. The applicants request allowance of all pending claims.

Respectfully submitted,

Rutan & Tucker, LLP

Dated: June 14, 2002

By:



Sandra P. Thompson, PhD, Esq.

Reg. No. 46,264

E-mail: sthompson@rutan.com

Direct Line: 714-641-3468

Attorneys for Applicant(s)
611 Anton Boulevard, Fourteenth Floor
Costa Mesa, CA 92626-1998
Tel: (714) 641-5100
Fax: (714) 546-9035